



## MEMORANDUM

### MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

*We strive to be caring, professional and fair*

To: Monroe County Planning Commission  
From: Steven Biel, Sr. Planner  
Through: Townsley Schwab, Sr. Director of Planning & Environmental Resources *TS*  
Date: April 20, 2010  
Subject: *Administrative Appeal by Patricia Mull concerning property located at 150 Ellis Drive, Tavernier, having Real Estate No. 00490130.000100*

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**Meeting: April 28, 2010**

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I DECISION BEING APPEALED:

The appellant is appealing a decision by Townsley Schwab, Sr. Director of Planning & Environmental Resources, which was set forth in a Letter of Understanding to Leon D. Kula dated December 22, 2009.

The precise decision being appealed is a determination by the planning director that a workshop was lawfully established for a low to medium intensity commercial retail use. Furthermore, the appellant contends that if the planning commission determines there is evidence to support a finding that the commercial retail use of the workshop was lawfully established, the planning commission should find that the property owner abandoned and discontinued the lawful nonconforming use of the single-family residence on the property by the converting the workshop to commercial retail use.

Location:

Address: 150 Ellis Drive, Tavernier, approximate mile marker 92.5 (bayside)

Legal Description: Part of Tract 1, Platt of Survey of Ellis Property (PB2-99), Key Largo, Monroe County, Florida

Real Estate Number: 00490130.000100

Appellant: Patricia Mull

II RELEVANT PRIOR COUNTY ACTIONS:

The site is currently developed with a single-family residence and a detached building, currently used by the property owner as a workshop. According to the Monroe County Property Appraiser's records, both the 1,940 ft<sup>2</sup> single-family residence and the 864 ft<sup>2</sup> workshop building were constructed in 1948. The appraiser's records also imply that the workshop's floor area was remodeled or expanded in 1993. Building permits could not be

1 found that permitted either structure, which is not uncommon for structures built prior to  
2 1950.

3  
4 III BACKGROUND INFORMATION:

- 5  
6 A. Total Size of Site: 0.753 acres (32,810 ft<sup>2</sup>)  
7 B. Land Use District: Suburban Commercial (SC)  
8 C. Future Land Use Map (FLUM) Designation: Mixed Use/Commercial (MC)  
9 D. Tier Designation: Undesignated  
10 E. Existing Vegetation / Habitat: Developed  
11 F. Community Character of Immediate Vicinity: Mix of commercial and residential uses  
12



33 Subject Property (outlined in blue) (2009)  
34

35 IV REVIEW OF APPLICATION:  
36

37 Regarding the decision being appealed (the determination that the workshop was lawfully  
38 established for a low to medium intensity commercial retail use), staff found that the existing  
39 commercial retail use taking place within the workshop building was lawfully established  
40 and thereby the floor area of the workshop building (not the adjacent single-family residence)  
41 was exempt from the Non-Residential Rate of Growth Ordinance (NROGO) permit  
42 allocation system based on the following rationale, as stated in the letter of understanding:  
43

44 Concerning the existing building in which the workshop is located, pursuant to  
45 MCC §138-50, [the NROGO] shall not apply to the redevelopment, rehabilitation  
46 or replacement of any lawfully-established, non-residential floor area which does

1 not increase the amount of non-residential floor area greater than that which  
2 existed on the site prior to the redevelopment, rehabilitation or replacement.  
3 Therefore, owners of land containing non-residential floor area shall be entitled to  
4 one square foot for each such square foot lawfully-established. Non-residential  
5 floor area is the sum of the gross floor area for a non-residential building or  
6 structure as defined in MCC §101-1, any areas used for the provision of food and  
7 beverage services and seating whether covered or uncovered, and all covered,  
8 unenclosed areas. Administrative Interpretation 03-108 provides the criteria to be  
9 used by Staff to determine whether or not no-residential floor area was lawfully-  
10 established.

11  
12 There is no building permit on file for the construction of the building. In  
13 addition, there is no notation of a commercial workshop or any non-residential  
14 use on the parcel in the Monroe County Property Appraiser's records. Therefore,  
15 there is no definitive information as to whether or not the structure was initially  
16 built to serve as an accessory structure to the single-family residence or to serve  
17 an independent building for commercial use.

18  
19 There is a reference to the workshop in the application submitted for Building  
20 Permit #973-3871, which was issued in 1997 for the demolition of a shed and  
21 concrete pad and the construction of a new concrete pad in front of a workshop.  
22 In addition, aerial photography dating back to 1986 shows the structure in which  
23 the workshop is located; the Applicant submitted tax records for the business with  
24 150 Ellis Drive as its address; and the Applicant provided several newspaper  
25 articles that imply the workshop was in existence on the site for several years.

26  
27 Based on a review of the records, Staff has determined that the existing building  
28 in which the workshop is located was lawfully-established and its present non-  
29 residential use was lawfully-established.

30  
31 Staff has reviewed the appellant's basis of appeal; however the information provided wherein  
32 does not clearly indicate that the workshop was not lawfully established and thereby provide  
33 reasoning to adjust or abandon the determination that the workshop building was lawfully  
34 converted to a commercial retail use. Based on the information provided by the applicant,  
35 staff determined that commercial retail use within the workshop was established prior to  
36 1986. This determination was based on references to a workshop in building permit files and  
37 other records provided by the property owner. In any event, the property's land use district  
38 designation of SC allows medium/low intensity commercial retail uses of less than 2,500 ft<sup>2</sup>  
39 as-of-right with a building permit.

40  
41 Regarding the appellant's second contention, that if the planning commission determines  
42 there is evidence to support a finding that the commercial retail use of the workshop was  
43 lawfully established, the planning commission should find that the property owner  
44 abandoned and discontinued the lawful nonconforming use of the single-family residence on  
45 the property by the converting the workshop to commercial retail use, staff has found that

1 such a determination would not be consistent with the provisions relating to the continuance  
2 of nonconforming uses. As stated in the letter of understanding, staff has determined:

3  
4  
5 Concerning the existing single-family residence on the property, pursuant to MCC  
6 §138-22(1), the Rate of Growth Ordinance (ROGO) shall not apply to the  
7 redevelopment, rehabilitation or replacement of any lawfully-established  
8 residential dwelling unit which does not increase the number of residential  
9 dwelling units above that which existed on the site prior to the redevelopment,  
10 rehabilitation or replacement. Therefore, owners of land containing residential  
11 dwelling units shall be entitled to one (1) unit for each such unit lawfully-  
12 established. Administrative Interpretation 03-108 provides the criteria to be used  
13 by Staff to determine whether or not a residential unit was lawfully-established.

14  
15 There is no building permit on file for the construction of the single-family  
16 residence. However, several building permits for improvements to the single-  
17 family residence were found. In addition, the Monroe County Property  
18 Appraiser's records indicate that a residential unit has been on the tax roll from  
19 1982 to 2009, with the year built of the building indicated as 1948, and aerial  
20 photographs support the existence of the structure back to 1986.

21  
22 Based on a review of the records, Staff has determined that the existing single-  
23 family residence was lawfully-established.

24  
25 ...

26  
27 Pursuant to MCC §130-93, dwelling units not deed-restricted as employee  
28 housing or commercial apartments are not permitted in the SC district. However,  
29 since the existing single-family residence was lawfully-established it may  
30 continue in accordance with MCC §130-163. Notwithstanding the provisions of  
31 MCC §130-157 and §130-158, the owners of land upon which a lawfully  
32 established dwelling unit exists shall be entitled to one dwelling unit for each such  
33 unit in existence. Such legally-established dwelling unit shall not be considered as  
34 a nonconforming use.

35  
36 The existing market-rate single-family residence is not within the same building as the  
37 workshop. However, in accordance with MCC §130-163, it is not a nonconforming use and  
38 its continued existence is permitted whether or not a commercial retail use, or any other new  
39 use, is introduced to the property.

40  
41 V RECOMMENDATION:

42  
43 Using the records and criteria set forth in Administrative Interpretation 03-108, staff has  
44 found that the existing structure was lawfully-established and thereby requests that the  
45 Planning Commission uphold the decision of the Senior Director of Planning &  
46 Environmental Resources.

1 Attachment A:  
2 Letter to Leon D. Kula from Townsley Schwab, Senior Director of Planning &  
3 Environmental Resources, dated December 22, 2009

# County of Monroe

## Growth Management Division

### Planning & Environmental Resources

#### Department

2798 Overseas Highway, Suite 410  
Marathon, FL 33050  
Voice: (305) 289-2500  
FAX: (305) 289-2536



### Board of County Commissioners

Mayor Sylvia J. Murphy, Dist. 5  
Mayor Pro Tem Heather Carruthers, Dist. 3  
Kim Wigington, Dist. 1  
George Neugent, Dist. 2  
Mario Di Gennaro, Dist. 4

*We strive to be caring, professional and fair*

December 22, 2009

Don Horton  
No Stress Property Management  
144 Apache Street  
Tavernier, FL 33070

**SUBJECT: LETTER OF UNDERSTANDING FOR THE 'KULA' PROPERTY LOCATED AT 150 ELLIS DRIVE, TAVERNIER, MILE MARKER 92.5 (BAYSIDE) AND HAVING REAL ESTATE NUMBER 00490130.000100**

Mr. Horton,

Pursuant to §110-3 of the Monroe County Code (MCC), this document shall constitute a Letter of Understanding (LOU). On November 24, 2009, a Pre-Application Conference regarding the above-referenced property was held at the office of the Monroe County Planning & Environmental Resources Department on Key Largo.

Attendees of the meeting included Don Horton, No Stress Property Management, Inc., and John Jabro (hereafter referred to as "the Applicant") and Joseph Haberman, Principal Planner; Steven Biel, Senior Planner; and Barbara Bauman, Senior Planning Technician (hereafter referred to as "Staff").

*Materials presented for review included:*

- (a) Pre-Application Conference Request Form;
- (b) Monroe County Property Record Card; and
- (c) Supporting Documentation (tax records and newspaper articles)

### **I. APPLICANT PROPOSAL**

1. The Applicant is requesting that the Planning & Environmental Resources Department recognize that the existing commercial retail use was lawfully-established on the subject property. The Applicant is also requesting that the Department allow the use of the commercial retail building to be expanded from only a workshop with no visiting customers to a workshop and studio where customers can visit and purchase artwork and other products produced on the site. The Applicant

contends that the property owner has been operating a metal sculpturing business out of a workshop on the site since as early as 1983.



Subject Property (outlined in blue) (2009)

## II. SUBJECT PROPERTY DESCRIPTION

1. The subject property is located at 150 Ellis Drive in Tavernier Key Largo, at approximate mile marker 92.5 of US 1. The site consists of approximately 32,810 ft<sup>2</sup> (0.753 acres).
2. The subject property is currently identified as real estate (RE) number 00490130.000100 and is legally described as part of tract 1, Plat of Survey of Ellis Property (PB2-99), Key Largo, Monroe County, Florida.
3. According to the Monroe County Property Appraiser's records, the parcel is currently owned by Leon D. Kula, Trustee (Leon D. Kula Living Trust).
4. According to the Monroe County Property Appraiser's records, the parcel currently has a property classification (PC) code of 01-Single-Family.

## III. RELEVANT PRIOR COUNTY ACTIONS

1. The site is currently developed with a single-family residence and a detached building, currently used by the property owner as a workshop. According to the Monroe County Property Appraiser's records, the 1,940 ft<sup>2</sup> single-family residence was constructed in 1948 and the 864 ft<sup>2</sup> building in which the workshop is located was constructed in 1948. The Appraiser's records also imply that the workshop building's floor area was remodeled or expanded in 1993. Staff could

not locate building permits approving either the single-family residence or the building in which the workshop is located. However, this is common for structures built prior to 1950.

#### **IV. REVIEW OF REDEVELOPMENT PROPOSAL**

The following land development regulations directly affect the proposal. However, there are other land development regulations not referred to nor described in this letter which may govern future development as well:

1. The property has a Land Use District designation of Suburban Commercial (SC) and a Future Land Use Map (FLUM) designation of Mixed Use/Commercial (MC).
2. Concerning the existing single-family residence on the property, pursuant to MCC §138-22(1), the Rate of Growth Ordinance (ROGO) shall not apply to the redevelopment, rehabilitation or replacement of any lawfully-established residential dwelling unit which does not increase the number of residential dwelling units above that which existed on the site prior to the redevelopment, rehabilitation or replacement. Therefore, owners of land containing residential dwelling units shall be entitled to one (1) unit for each such unit lawfully-established. Administrative Interpretation 03-108 provides the criteria to be used by Staff to determine whether or not a residential unit was lawfully-established.

There is no building permit on file for the construction of the single-family residence. However, several building permits for improvements to the single-family residence were found. In addition, the Monroe County Property Appraiser's records indicate that a residential unit has been on the tax roll from 1982 to 2009, with the year built of the building indicated as 1948, and aerial photographs support the existence of the structure back to 1986.

Based on a review of the records, Staff has determined that the existing single-family residence was lawfully-established.

3. Concerning the existing building in which the workshop is located, pursuant to MCC §138-50, the Non-Residential Rate of Growth Ordinance (NROGO) shall not apply to the redevelopment, rehabilitation or replacement of any lawfully-established, non-residential floor area which does not increase the amount of non-residential floor area greater than that which existed on the site prior to the redevelopment, rehabilitation or replacement. Therefore, owners of land containing non-residential floor area shall be entitled to one square foot for each such square foot lawfully-established. Non-residential floor area is the sum of the gross floor area for a non-residential building or structure as defined in MCC §101-1, any areas used for the provision of food and beverage services and seating whether covered or uncovered, and all covered, unenclosed areas. Administrative Interpretation 03-108 provides the criteria to be used by Staff to determine whether or not non-residential floor area was lawfully-established.

There is no building permit on file for the construction of the building. In addition, there is no notation of a commercial workshop or any non-residential use on the parcel in the Monroe County Property Appraiser's records. Therefore, there is no definitive information as to whether or not the structure was initially built to serve as an accessory structure to the single-family residence or to serve an independent building for commercial use.



There is a reference to the workshop in the application submitted for Building Permit #973-3871, which was issued in 1997 for the demolition of a shed and concrete pad and the construction of a new concrete pad in front of a workshop. In addition, aerial photography dating back to 1986 shows the structure in which the workshop is located; the Applicant submitted tax records for the business with 150 Ellis Drive as its address; and the Applicant provided several newspaper articles that imply the workshop was in existence on the site for several years.

Based on a review of the records, Staff has determined that the existing building in which the workshop is located was lawfully-established and its present non-residential use was lawfully-established.

4. Pursuant to MCC §130-93, dwelling units not deed-restricted as employee housing or commercial apartments are not permitted in the SC district. However, since the existing single-family residence was lawfully-established it may continue in accordance with MCC §130-163. Notwithstanding the provisions of MCC §130-157 and §130-158, the owners of land upon which a lawfully established dwelling unit exists shall be entitled to one dwelling unit for each such unit in existence. Such legally-established dwelling unit shall not be considered as a nonconforming use.
5. A workshop and studio for the sale or artwork and other products is a commercial retail use. Depending on trip generation, commercial retail uses are classified as low, medium or high-intensity. This type of business would be either low or medium intensity.

Pursuant to MCC §130-93, in the SC District, low and medium-intensity commercial retail uses of less than 2,500 ft<sup>2</sup> of floor area may be permitted as-of-right with a building permit.

6. As a note, the Applicant implied that the artwork and other materials made of metal would be produced on the site. Staff has determined that as long as the business does not carry out any of the activities expressly contained within the definition of industrial use, the production of the items shall be a component of the commercial retail use. As defined in MCC §101-1, an industrial use means a use devoted to the manufacture, warehousing, assembly, packaging, processing, fabrication, storage, or storage of goods and materials whether new or used or the substantial refinishing, repair and/or rebuilding of vehicles or boats. Pursuant to §130-93(b)(7), light industrial uses are permitted in the SC district; however a minor conditional use permit shall be required.
7. The allowance of customers into the workshop/studio would trigger the site to be brought into compliance with the off-street parking regulations. Pursuant to MCC §114-67, the following off-street parking would be required:

Specific Use	Multiplier	Proposed	Required Spaces
Single-family dwelling unit	2 spaces / dwelling unit	1 dwelling unit	2 spaces
Commercial Retail	3 spaces / 1,000 ft <sup>2</sup> of floor area	864 ft <sup>2</sup>	3 spaces
total			5 spaces

## V. OTHER ISSUES CONCERNING THE PROPOSAL

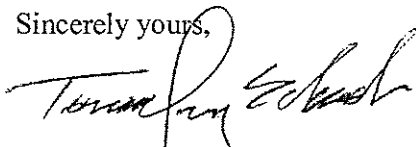
1. The following shall be required in order for Staff to approve the change of intensity of the existing workshop from one-employee only (the self-employed property owner) into the proposed workshop/studio with customers and possibly additional employees:
  - a) The Applicant shall apply for a building permit in order to have the increased intensity to the site approved. An increase in intensity will result from the traffic of customers and patrons visiting the business.
  - b) The Applicant shall bring the site into compliance with the off-street parking regulations. A site plan showing parking shall be submitted as part of the aforementioned building permit application.
  - c) The Applicant shall bring the building and site into compliance with all necessary Americans with Disabilities Act (ADA) regulations. A site plan showing handicap parking and access to the building shall be submitted as part of the aforementioned building permit application.
  - d) The Applicant shall agree that no use that falls within the definition of industrial use shall occur on the site unless a minor conditional use permit is applied for and received.
  - e) The Applicant shall coordinate with the Monroe County Floodplain Coordinator and if determined necessary shall flood-proof the workshop/studio building.
  - f) The Applicant shall coordinate with the Monroe County Office of the Fire Marshal.
  - g) The Applicant shall contact the Monroe County Property Appraiser and determine if the property classification (PC) code should be modified from 01-Single-Family to a classification that properly assesses the single-family and commercial use on the site.

Pursuant to MCC §110-3, you are entitled to rely upon the representations set forth in this letter as accurate under the regulations currently in effect. This letter does not provide any vesting to the existing regulations. If the Monroe County Code or Year 2010 Comprehensive Plan are amended, the project will be required to be consistent with all goals, objectives and standards at the time of development approval. The Planning & Environmental Resources Department acknowledges that all items required as a part of the application for development approval may not have been addressed at the meeting.

You may appeal decisions made in this letter. If you choose to do so, please contact the Planning Commission Coordinator at (305)289-2500 for the necessary forms and information. The appeal must be filed with the County Administrator, 1100 Simonton Street, Gato Building, Key West, FL 33040, within thirty (30) calendar days from the date of this letter. In addition, please submit a copy of your application to Planning Commission Coordinator, Monroe County Planning & Environmental Resources Department, 2798 Overseas Highway, Suite 410, Marathon, FL 33050.

We trust that this information is of assistance. If you have any questions regarding the contents of this letter, or if we may further assist you with your project, please feel free to contact our Marathon office at (305)289-2500.

Sincerely yours,



Townsley Schwab, Senior Director Planning & Environmental Resources